



## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 76**

**[MB Docket No. 23-427; FCC 23-115; FR ID 197786]**

#### **Reporting Requirements for Commercial Television Broadcast Station Blackouts**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission proposes a reporting framework for TV station blackouts occurring on video service platforms offered by cable operators, satellite TV providers, and other multichannel video programming distributors (MVPDs). The proposed rule would require notification to the Commission when broadcast programming is disrupted for over 24 hours as a result of an inability to obtain a broadcast station's consent to retransmit its signal. The proposed reporting framework would require MVPDs to publicly report to the Commission the beginning and end of any qualifying blackout of a commercial broadcast television station, or stations, and disclose either publicly or confidentially the number of subscribers affected by the blackout. Timely notification of these blackouts via a Commission-hosted reporting portal would ensure that the Commission and the public receive prompt and accurate information about critical MVPD service disruptions involving broadcast stations when they occur.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATIONS IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments and reply comments may be filed using the Commission's Electronic Comment

Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). You may submit comments, identified by MB Docket No. 23-427, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at:  
<http://www.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Cathy Williams, FCC, via email to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Brooke Olausen of the Media Bureau, Policy Division at [brooke.olaussen@fcc.gov](mailto:brooke.olaussen@fcc.gov), (202) 418-1060. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov), (202) 418-2991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 23-115, adopted on December 19, 2023 and released on December 21, 2023.

The full text of this document is available electronically via the Commission's website at:

<https://docs.fcc.gov/public/attachments/FCC-23-115A1.pdf>. To request materials in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

*Comments should address:* (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

## **Synopsis**

### **I. INTRODUCTION**

1. This Notice of Proposed Rulemaking (*NPRM*) proposes to amend the Commission's rules to require notification to the Commission when a blackout of a broadcast television station, or stations, occurs on a video programming service offered by a multichannel video programming distributor (MVPD) for 24 hours or more due to a breakdown in retransmission consent negotiations between broadcasters and MVPDs. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of information about the number of subscribers affected (which we propose may be designated as confidential). By requiring timely notification of broadcast station blackouts in a centralized, Commission-hosted database, these proposed reporting requirements would ensure that the Commission and public receive prompt and accurate information about critical MVPD service disruptions involving broadcast stations when they occur.

### **II. BACKGROUND**

2. The Communications Act of 1934, as amended (the Act), requires that cable operators, satellite TV providers, and other MVPDs obtain a broadcast TV station's consent to lawfully retransmit

the signal of a broadcast station to subscribers.<sup>1</sup> Commercial stations may either give consent by demanding carriage (must carry) or seek to negotiate for compensation in exchange for carriage (retransmission consent), and may switch between these choices every three years.<sup>2</sup> If a former “must carry” station elects retransmission consent but is unable to reach agreement for carriage, or the parties to an existing retransmission consent agreement do not extend, renew, or revise that agreement prior to its expiration, the MVPD loses the right to carry the signal. The result is a “blackout” of that existing broadcast programming on the MVPD platform.<sup>3</sup> When these broadcast station blackouts occur, the MVPD’s subscribers typically lose access through their MVPD service to the station’s entire signal, including both the national and local programming provided by the broadcaster.<sup>4</sup> Thus, if the blacked-out broadcast station was owned by or affiliated with a national broadcast network—such as ABC, CBS, FOX, NBC, The CW, Telemundo, or Univision—subscribers would be unable to access through their MVPD service that broadcaster’s network programming as well as the local news, traffic, weather, and emergency information programming provided by their local station.

3. Over the past decade, data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically. For the first 20 years of the retransmission consent regime, S&P Capital IQ reports that there were a total of 81 failed retransmission consent negotiations that resulted in blackouts of 447 broadcast TV stations in 365 markets, with two thirds of the impasses occurring just in the last three years of that period, from 2011 to 2014.<sup>5</sup> This increase in the number of blackouts has persisted for over a decade, and the impact of each individual

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<sup>1</sup> 47 U.S.C. 325.

<sup>2</sup> *Id.* Section 325(b)(3)(B).

<sup>3</sup> Federal Communications Commission, *Retransmission Consent*, <https://www.fcc.gov/media/policy/retransmission-consent> (last updated Sept. 27, 2021).

<sup>4</sup> Although some MVPD subscribers may be able to view the blacked out local broadcast signals using over-the-air antennas or other equipment, not all live in locations that can receive over-the-air signals, and further not all would have the equipment necessary to do so. FCC, *DTV Reception Maps*, <https://www.fcc.gov/media/engineering/dtvmaps> (last visited Sept. 28, 2023) (showing over-the-air signal availability and noting that “[a]ctual signal strength may vary based on a variety of factors, including, but not limited to, building construction, neighboring buildings and trees, weather, and specific reception hardware,” and that “signal strength may be significantly lower in extremely hilly areas”).

<sup>5</sup> Atif Zubair, *History of Retrans Deals and Signal Blackouts, 1993-2014 YTD*, Market Intelligence, S&P Capital IQ Pro (Feb. 25, 2014) (reporting data from “publicly announced retrans agreements between broadcasters and multichannel operators” from 1993 through Feb. 25, 2014); *id.* (“Blackouts in our database show that signal disruptions have become more frequent during the past three years since 2011, contributing 54 of the total 81 blackouts in our database.”).

blackout has increased as more stations are taken off the air for longer periods of time. In 2019 alone, just 18 retransmission consent impasses resulted in 272 station blackouts that spanned 205 markets and affected 26.5 million subscribers.<sup>6</sup> According to S&P Capital IQ, these blackouts “on average remained in effect for 171 days—higher than the 98-day average in 2018, 33 days in 2017 and 52 days in 2016.”<sup>7</sup> Some MVPD subscribers in over half of television markets continue to experience blackouts every year.<sup>8</sup>

4. Members of Congress have expressed concern about the impact of broadcast station blackouts. After a March 2022 FCC oversight hearing, Rep. Clarke of New York noted that “[o]ver the last two years, there were an estimated 460 blackouts associated with retransmission consent impasses, resulting in consumers losing access to their favorite shows. Unfortunately, these blackouts may be used as leverage during retransmission negotiations by broadcasters at the expense of consumer access to television programming.”<sup>9</sup> In addition, during high-profile retransmission consent disputes, the Commission often receives letters from members of Congress urging the Commission to take action to prevent or end a broadcast station blackout.<sup>10</sup>

5. Added as part of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), section 325 of the Act prohibits broadcast television stations and MVPDs from “failing

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<sup>6</sup> Atif Zubair, *Retrans Roundup 2019*, Market Intelligence, S&P Capital IQ Pro (Jan. 21, 2020) (reporting “2019 publicized broadcast signal disruptions” data as of Dec. 31, 2019 in Excel format accessible via link to “retrans agreement and signal disruptions databases” embedded in article).

<sup>7</sup> *Id.*

<sup>8</sup> Peter Leitzinger, *Retrans Roundup 2021*, Market Intelligence, S&P Capital IQ Pro (Jan. 28, 2022) (reporting 2020 and 2021 “publicized broadcast signal disruptions” data in Excel format accessible via link to “retrans agreement and signal disruptions databases” embedded in article); Peter Leitzinger, *Retrans Roundup 2022*, Market Intelligence, S&P Capital IQ Pro (Feb. 7, 2023) (reporting “2022 publicized broadcast signal disruptions” data as of Jan. 15, 2023 in Excel format accessible via link to “retrans agreement and signal disruptions databases” embedded in article). By MVPDs’ own count, between 2010 and 2019 there have been more than 1,250 broadcast station blackouts since 2010. Eun-A Park, Rob Frieden, Krishna Jayakar, *Blackouts in Retransmission Consent Negotiations: Empirical Analysis of Factors Predicting their Frequency and Duration*, TPRC48: The 48th Research Conference on Communication, Information, and Internet Policy (December 17, 2020) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3749577](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749577).

<sup>9</sup> *Subcommittee on Communications and Technology Hearing on Connecting America: Oversight of the FCC*, 117<sup>th</sup> Cong., at 7 (Mar. 31, 2022), <https://docs.house.gov/meetings/IF/IF16/20220331/114545/HHRG-117-IF16-Wstate-RosenworcelJ-20220331-SD001.pdf> (Subcommittee question posed in statement of the Honorable Jessica Rosenworcel, Chairwoman, FCC).

<sup>10</sup> *See, e.g.*, Letter from Rep. David Cicilline *et al.*, U.S. House of Representatives, to Jessica Rosenworcel, Chairwoman, FCC (Oct. 25, 2022), <https://docs.fcc.gov/public/attachments/DOC-389144A2.pdf> (“While we take no position as to the merits of this dispute, we believe that Rhode Islanders should not be caught in the middle and as a consequence be left without access to local news and programming. We encourage the Federal Communications Commission to do everything in its power to help bring the parties together so that negotiations can continue in good faith.”).

to negotiate [retransmission consent] in good faith,”<sup>11</sup> and the Commission’s rules provide a framework for determining whether those negotiations are in fact conducted in good faith.<sup>12</sup> If a broadcast station or MVPD believes the other party has not acted in good faith, it may file a good faith complaint with the Commission either before or after a carriage agreement is signed.<sup>13</sup>

6. Congress has not, however, authorized the Commission to require that parties resolve retransmission consent disputes with carriage agreements, or to force carriage in the absence of an agreement.<sup>14</sup> While section 325 of the Act grants the Commission authority to establish regulations governing retransmission consent negotiations, the Commission has repeatedly determined that this authority does not extend to requiring carriage of a broadcast station during a retransmission dispute.<sup>15</sup> Given this limitation, the Commission’s good faith rules focus on “develop[ing] and enforce[ing] a process” conducive to negotiation rather than “sit[ting] in judgment of the terms of every retransmission consent agreement[.]”<sup>16</sup> Nevertheless, broadcast station blackouts have remained a cause for concern. In a 2011 action proposing amendments to the Commission’s good faith rules, the Commission observed that “[i]n recent times, the actual and threatened service disruptions resulting from increasingly

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<sup>11</sup> 47 U.S.C. 325(b)(3)(C). In 1999, Congress enacted the Satellite Home Viewer Improvement Act (SHVIA), which required television stations to negotiate retransmission consent with MVPDs in good faith and included the “competitive marketplace considerations” provision. Pub. L. 106-113, 113 Stat. 1501 (1999). Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs. Pub. L. No. 108-447, 118 Stat. 2809 (2004) (referred to as the Satellite Home Viewer Extension and Reauthorization Act (SHVERA)).

<sup>12</sup> 47 CFR 76.65(b).

<sup>13</sup> *Id.* §§ 76.65(c), 76.65(e).

<sup>14</sup> See, e.g., Letter from Jessica Rosenworcel, Chairwoman, FCC, to Rep. David Cicilline *et al.*, U.S. House of Representatives (Nov. 1, 2022), <https://docs.fcc.gov/public/attachments/DOC-389144A1.pdf> (responding to a letter from members of Congress urging FCC action after failed carriage negotiations between Nexstar and Verizon resulted in a blackout and emphasizing that “it is important to understand that the Commission’s authority in this area is limited, as under Section 325 we cannot order or otherwise require carriage of a broadcast station during a dispute.”).

<sup>15</sup> *Amendment of the Commission’s Rules Related to Retransmission Consent*, MB Docket No. 10-71, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2720, para. 3 (2011) (*2011 Retrans Consent NPRM*) (“The Commission does not have the power to force broadcasters to consent to MVPD carriage of their signals nor can the Commission order binding arbitration.”); *id.* at 2728, para. 18 (“[R]egarding interim carriage, examination of the Act and its legislative history has convinced us that the Commission lacks authority to order carriage in the absence of a broadcaster’s consent due to a retransmission consent dispute. . . . We thus interpret section 325(b) to prevent the Commission from ordering carriage over the objection of the broadcaster, even upon a finding of a violation of the good faith negotiation requirement.”); *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, CS Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445, 5471, para. 60 (2000) (*Good Faith Order*) (“[W]e see no latitude for the Commission to adopt regulations permitting retransmission during good faith negotiation or while a good faith or exclusivity complaint is pending before the Commission where the broadcaster has not consented to such retransmission.”).

<sup>16</sup> *Good Faith Order*, 15 FCC Rcd at 5454-55, paras. 23-24.

contentious retransmission consent disputes present a growing inconvenience and source of confusion for consumers.”<sup>17</sup> Since the Commission made that observation, the number of retransmission consent impasses has continued to increase, causing service disruptions for consumers.<sup>18</sup>

7. In addition to establishing the retransmission consent regime, the 1992 Cable Act also bolstered the Commission’s customer service authority over cable and satellite TV providers. Pursuant to sections 632(b) and 335(a), the Commission may adopt customer service requirements for cable operators and public interest regulations for DBS providers.<sup>19</sup> Section 632(b) of the Act directs the Commission to “establish standards by which cable operators may fulfill their customer service requirements” and specifies a set of minimum customer service areas that the adopted standards must cover.<sup>20</sup> In 1993, the Commission implemented this mandate in § 76.309 of its rules, adopting a single set of customer service requirements for cable operators in the areas Congress specified.<sup>21</sup> While at that time the Commission declined to adopt additional standards in areas not specified in the statute, it reserved the right to revise and supplement the standards.<sup>22</sup>

8. Similarly, section 335(a) authorizes the Commission to impose “public interest or other requirements for providing video programming” on DBS providers.<sup>23</sup> The statute directs the Commission to impose certain minimum obligations on DBS providers, including complying with the political programming requirements of sections 312(a)(7) and 315 of the Act.<sup>24</sup> It also directs the Commission to examine opportunities that may serve the principle of localism in the Act.<sup>25</sup> As with section 632, when implementing section 335 of the Act, the Commission declined to impose any additional public interest

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<sup>17</sup> 2011 *Retrans Consent NPRM*, 26 FCC Rcd at 2729, para. 20.

<sup>18</sup> *Supra* para. 3.

<sup>19</sup> 47 U.S.C. 552(b), 335(a).

<sup>20</sup> 47 U.S.C. 552(b).

<sup>21</sup> 47 CFR 76.309(c)(1) (addressing cable system office hours and telephone availability), 76.309(c)(2) (addressing installations, outages, and service calls), 76.309(c)(3) (addressing communications between cable operators and cable subscribers); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892, 2901, para. 34 (1993) (*Cable Operator Customer Service R&O*) (“[W]e are adopting a single set of federal customer service standards which deal with the specific areas set out in section 632(b).”).

<sup>22</sup> *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2907, para. 69.

<sup>23</sup> 47 U.S.C. 335(a).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

obligations on DBS providers beyond the minimum protections specified in the statute.<sup>26</sup> The Commission explained that DBS service “is still a relatively young industry and we decline to impose any additional obligations on the DBS industry before we see how DBS serves the public.”<sup>27</sup>

9. Currently, neither broadcast stations nor MVPDs are under any obligation to report to the Commission MVPD service disruptions involving broadcast programming. Neither the Commission nor the public has a systematic method for learning of significant MVPD service disruptions involving broadcast programming.<sup>28</sup> When a party to a retransmission consent negotiation files a complaint with the Commission alleging a violation of the Commission’s good faith negotiation rules, the complaint process requires the parties to provide the Commission with relevant details about the blackout and each party’s assertions as to why the negotiation reached an impasse. Since the adoption of the good faith negotiation rules in 2000, there have been relatively few complaints alleging violations of the Commission’s good faith negotiation rules despite an escalation in the number of stalled or failed retransmission consent negotiations resulting in blackouts.<sup>29</sup> The Commission usually learns of broadcast station blackouts on MVPD platforms through reports of disputes in the media or informal communication with staff. This ad hoc process does not provide the Commission, Congress, or the public<sup>30</sup> with timely or specific information regarding service disruptions.<sup>31</sup> Accordingly, we initiate this rulemaking.

### III. DISCUSSION

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<sup>26</sup> *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254, 23279-80, para. 64 (1998).

<sup>27</sup> *Id.* at 23280, para. 64.

<sup>28</sup> While, as required by our rules, MVPDs notify subscribers when specific broadcast station channels are blacked out, we are not aware of any systematic method used by MVPDs or broadcasters to notify the general public of broadcast station blackouts. *Infra* note 31.

<sup>29</sup> *Id.* See *2011 Retrans Consent NPRM*, 26 FCC Rcd at 2724, para. 12 (noting at the time that “[t]here have been very few complaints filed alleging violations of the Commission’s good faith rules”); *DirecTV, LLC; AT&T Services, Inc., Complainants, v. Deerfield Media, Inc. et al.*, MB Docket No. 19-168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695, 10699, para. 8 (2020) (noting that the Deerfield good faith complaint “is only the second good faith complaint that was not withdrawn, dismissed, or denied since the rules were established and the first one that the Commission has had the opportunity to consider”).

<sup>30</sup> Section 76.1603 provides that cable operators must notify their subscribers “as soon as possible” when service changes occur due to failed retransmission consent or program carriage negotiations. 47 CFR 76.1603(b).

<sup>31</sup> While S&P Capital IQ Pro’s retransmission database is a helpful resource, it provides limited visibility into the retransmission consent marketplace on an ongoing basis. The database is typically published only in yearly intervals, excludes independent and class A TV stations, and only lists publicized blackouts. Therefore, we do not believe data collected by S&P is a suitable substitute for complete or timely information on service disruptions. *Supra* note 8.



10. In the discussion below, we propose to require that MVPDs report retransmission consent blackouts within 48 hours and notify the Commission within two business days of its resolution. We discuss the specific aspects of the proposed reporting obligations and our proposed rule, and we address the Commission's authority to adopt the proposed requirements. We request comment on all aspects of the proposal, including the proposed rule as set forth below in Appendix A.

**A. Overview and Policy Considerations**

11. Given the data discussed above, we are concerned about the increasing number and duration of broadcast station blackouts on MVPD platforms across the country and the Commission's lack of ready access to basic information about such service disruptions. Given that many broadcast station blackouts on MVPD platforms occur without either party filing a complaint with the Commission, we cannot rely on good faith complaints to inform us when a deal impasse has resulted in a blackout, nor can we consider such complaints an accurate sampling of significant service disruptions. In addition, members of Congress regularly ask the Commission for information on broadcast station blackouts when they occur. Often the Commission does not have access to this important information through a consistent, reliable, and systematic means. To close this information gap, we tentatively conclude that obtaining blackout information from MVPDs would be the most effective method for the Commission to gain important and timely information about broadcast station blackouts occurring across the country and better fulfill our statutory obligation involving the retransmission consent negotiation process.<sup>32</sup>

12. Access to a centralized source of information about where and when broadcast station blackouts occur would be beneficial not only to the Commission, but also to consumers. To make informed decisions regarding video service, consumers must have access to easily available, accurate, and timely information about such services. While cable subscribers receive notice from their cable operator when an individual broadcast station blackout affects their own channel lineup and video service,<sup>33</sup> on a broader scale, consumers generally do not have access to a consolidated source of information about broadcast station blackouts occurring in aggregate. Such information would increase transparency about the frequency and duration of blackouts and help consumers understand the extent to which blackouts

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<sup>32</sup> 47 U.S.C. 325(b)(3)(A).

<sup>33</sup> 47 CFR 76.1603(b).

might be a problem not just in their own locality but in other areas of the country as well. For example, having aggregate data about blackouts may be a useful metric for consumers looking for a new MVPD service provider. For consumers that place a premium on continuity of service, having access to this data may enable them to investigate which MVPD service providers—as well as broadcast affiliates—have a stronger history of blackouts.

13. *Entities Responsible for Reporting.* We seek comment on requiring affected MVPDs that stop carrying broadcast signals pursuant to expired retransmission consent agreements, including cable operators and DBS providers (Reporting Entities),<sup>34</sup> to comply with the proposed blackout reporting requirements, as more fully discussed below. While both MVPDs and broadcasters are subject to the requirements of section 325 of the Act and the Commission’s good faith rules, it is the responsibility of the MVPD, rather than the broadcaster, to stop retransmitting the broadcast station’s signal, and thereby remove the programming that is subject to blackout from their MVPD platforms upon the expiration of a carriage agreement.<sup>35</sup> Thus, as a practical matter, it is the MVPD who has the most ready access to and first-hand knowledge of when and where a broadcast station blackout occurs and which subscribers are affected, thereby ensuring that the Commission would receive the most complete, accurate, and up-to-date information. Further, as it is the MVPD subscribers who are directly impacted by these blackouts, we believe it makes the most sense for MVPDs to be responsible for reporting blackout information through the reporting portal. As a result, we tentatively conclude it would be least burdensome on MVPDs to report this information promptly and accurately to the Commission.

14. We therefore propose requiring MVPDs to notify the Commission of any blackouts of a broadcast station or stations that occur on their systems due to a loss of retransmission consent, and we seek comment on this proposal. Under this proposal, MVPDs would report incidents during which broadcast programming is disrupted for over 24 hours as a result of an inability to obtain a broadcast station’s consent to retransmit its signal. We seek comment on these understandings and this proposal. For example, are there circumstances in which the broadcaster, rather than the MVPD, removes the

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<sup>34</sup> See 47 CFR 76.64(d) (“A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.”); *infra* Appendix A—Proposed Rules, § 76.68(c)(1).

<sup>35</sup> 47 U.S.C. 325(a).

broadcast station(s) from the MVPD's platform?

15. Alternatively, we seek comment on whether we should impose the reporting obligation solely on broadcasters or impose a joint blackout reporting requirement on both MVPDs and broadcasters. Would adopting a broadcaster-only reporting requirement or imposing a joint reporting obligation on both MVPDs and broadcasters provide additional benefits to the public? Do broadcasters have access to different, additional, or more timely information about blackouts that would be beneficial for the public to see in real-time? If reporting obligations were the same for both parties, would the Commission need to address or attempt to resolve conflicting reports? Instead of requiring broadcasters to report blackouts, should we rely instead on broadcasters voluntarily providing additional information to supplement blackout notices submitted by MVPDs they believe contain inaccurate or incomplete information?

16. *Reporting Framework.* As discussed in more detail below, we propose requiring MVPDs to notify the Commission of both the start and conclusion of a broadcast station blackout. The initial notification would provide basic blackout information, both public and confidential, to the Commission within 48 hours of the start of a reportable broadcast station blackout (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable broadcast station blackout, would publicly identify the date retransmission resumed (Final Blackout Notification). We propose that this information be collected through an online reporting portal designed, hosted, and administered by the Commission.<sup>36</sup> Under our proposal, we will delegate to the Media Bureau the authority to issue a public notice giving Reporting Entities notice of the specific reporting procedures to submit blackout information via the reporting portal and identifying the date on which the reporting requirement would become effective. Public blackout information collected through the portal would then be available on the Commission's website. We seek comment generally on this proposal and on the specifics below. In addition, to the extent we adopt a reporting requirement for broadcasters, we seek comment on whether this same reporting framework should be applied to broadcasters or whether a different approach is appropriate for broadcasters.

17. To streamline reporting, we propose creating an online reporting portal, modeled after the

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<sup>36</sup> *Supra* paras. 23, 27.

Commission's Network Outage Reporting System (NORS).<sup>37</sup> The proposed data to be reported would be filed with the Commission via this web-based system. As with NORS, this system would use an electronic template to promote the ease of reporting and encryption technology to ensure the security of the information fields. The proposed blackout information to be reported would be available to the public, except for more sensitive information regarding subscribers, which Reporting Entities may designate as confidential. We have aimed to tailor the proposed requirements so that they impose a minimal burden on Reporting Entities while still ensuring that the Commission and the public have access to critical information on service disruptions.<sup>38</sup> We seek comment on this approach.

18. We tentatively conclude that the timely provision and compilation of blackout information would allow the Commission and the public to systematically track and analyze information on broadcast station blackouts on MVPD platforms across the country. The availability of this information would also help the Commission determine the frequency and duration of blackouts nationwide and identify any statistically meaningful trends across blackouts. Without such reporting, the Commission will continue to have limited visibility into broadcast station blackouts.<sup>39</sup> In the long run, this impairs the Commission's ability to oversee the retransmission consent negotiation process as intended by Congress. The prompt provision of blackout information will allow the Commission to more effectively discharge its statutory responsibilities by better monitoring breakdowns in retransmission consent negotiations.<sup>40</sup> We seek comment on this analysis.

## **B. Proposed Reporting Requirements**

19. We seek comment on the specific proposals that follow for implementing the proposed reporting requirements. In particular, we seek comment on whether reporting obligations should be mandatory or voluntary; the definition of a broadcast station blackout; the threshold for reporting a broadcast station blackout; how to submit the proposed filings; what information should be disclosed about broadcast station blackouts; what the costs and benefits of our proposed rule might be; and whether

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<sup>37</sup> Federal Communications Commission, *Network Outage Reporting System (NORS)*, <https://www.fcc.gov/network-outage-reporting-system-nors> (last updated Mar. 25, 2022).

<sup>38</sup> *Infra* para. 28.

<sup>39</sup> *Supra* note 31.

<sup>40</sup> We note that these reporting requirements would be separate from our good faith complaint procedure and are not intended to replace or inform the good faith complaint process.

better alternatives exist, including a more streamlined rule for small entities.

20. *Mandatory Reporting.* We propose that blackout reporting be a mandatory obligation. Mandatory reporting would permit the Commission and the public to obtain a comprehensive, timely view of broadcast station blackouts occurring on MVPD platforms nationwide. This information would be beneficial to the Commission's efforts to keep abreast of the impact these blackouts have on viewers, local broadcasting, and MVPD service. In contrast, voluntary reporting would likely create substantial gaps in data that would significantly impair such efforts, as has been the Commission's experience in the past with voluntary reporting.<sup>41</sup> Considering these factors, we tentatively conclude that voluntary reporting would not sufficiently serve the information collection purposes of this reporting initiative. We seek comment on this tentative conclusion. Are there other regulatory alternatives the Commission should consider?

21. *Definition of Broadcast Station Blackout.* For the purposes of this reporting rule, we propose defining a "Broadcast Station Blackout" as "any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission."<sup>42</sup> With this definition, we seek to encompass all blackouts occurring as a result of a retransmission consent dispute, and thus, in the context of blackout reporting, include all commercial full power, class A, and low power television (LPTV) broadcast stations within the definition of a "commercial television broadcast station."<sup>43</sup> We tentatively conclude it is appropriate to include class A and LPTV stations within the definition of "commercial television broadcast station" here because these stations, like full power stations, are subject to the requirements of section 325 of the Act and the

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<sup>41</sup> See *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Notice of Proposed Rulemaking, 26 FCC Rcd 7166, 7189-90, para. 57 (2011) (summarizing the Commission's unsuccessful attempt at voluntary outage reporting prior to the adoption of NORS and the part 4 rules: "previous provider participation in voluntary network-outage reporting was 'spotty,' the 'quality of information obtained was very poor,' and there was 'no persuasive evidence in the record that . . . all covered communications providers would voluntarily file accurate and complete outage reports for the foreseeable future or that mandatory reporting is not essential to the development, refinement, and validation of best practices.' Hence, mandatory reporting was adopted to ensure timely, accurate reporting.") (quoting *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16851-52, paras. 37-39 (2004)).

<sup>42</sup> *Infra* Appendix A, § 76.68(c)(2).

<sup>43</sup> *Id.* § 76.68(c)(3).

Commission's good faith rules.<sup>44</sup> We seek comment on this analysis and our proposed definition. Have there been or could there be instances in which, due to a retransmission consent dispute, MVPDs are required to cease retransmitting only some programming streams of a broadcast station and not others (for example, only the primary stream, but not the multichannel streams)?<sup>45</sup> If so, does the proposed definition adequately cover these scenarios? Are there any reasons why Broadcast Station Blackouts involving class A and LPTV stations should not be subject to the proposed reporting requirements?

22. *Reporting Threshold.* We propose requiring Reporting Entities to report all Broadcast Station Blackouts that last for over 24 hours. We tentatively conclude this reporting threshold will provide a sufficient level of information to build a more precise and complete picture of the state of blackouts that have a significant impact on consumers. Collecting information on all blackouts lasting over 24 hours will allow the Commission and the public to gain a better understanding of the frequency and duration of blackouts occurring in the retransmission consent marketplace. Blackouts lasting over 24 hours are more likely to cause consumer harm, whereas blackouts of shorter duration are more likely to have a lesser impact on viewers, and thus we propose that we should not impose reporting requirements on blackouts lasting less than 24 hours. We therefore tentatively conclude this threshold appropriately balances the burdens of Reporting Entities and the information needs of the Commission and consumers. We seek comment on the proposed reporting threshold and whether there should be any additional reporting thresholds. For example, should we also require reporting for blackouts based on a metric other than duration of the service disruption? If so, what metrics should be used to determine what would qualify as a reportable event? Do commenters believe the proposed reporting threshold is appropriate, or should reporting obligations be triggered by blackouts of longer or shorter duration? If proposing another reporting threshold, commenters should explain why they think it is more appropriate.

23. *Reporting Process.* Under our proposed rule, Reporting Entities would submit two notifications: an Initial Blackout Notification shortly after the beginning of a reportable Broadcast Station

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<sup>44</sup> 47 U.S.C. 325(a) (“... nor shall *any* broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.”) (emphasis added). *Compare* 47 U.S.C. 325(b)(2)(A) (“This subsection shall not apply...to retransmission of the signal of a noncommercial television broadcast station.”).

<sup>45</sup> 47 CFR 76.64(j) (allowing retransmission agreements to “specify the extent of the consent being granted, whether for the entire signal or any portion of the signal”).

Blackout and a Final Blackout Notification after resumption of carriage. All information would be submitted to the Commission within a designated online reporting portal in accordance with procedures further specified in a Bureau-issued public notice following adoption of these proposed reporting requirements.<sup>46</sup> We seek comment on this proposed rule and the details discussed below.

24. *Initial Blackout Notification.* We propose that, in the event of a Broadcast Station Blackout lasting over 24 hours, after that threshold is met, the Reporting Entity must submit an Initial Blackout Notification as soon as practicable, but no later than 48 hours after the initial interruption to the broadcast station programming.<sup>47</sup> The following information would be reported in the Notification and available to the public: the name of the Reporting Entity; the station or stations no longer being retransmitted, including network affiliation(s), if any, of each affected primary and multicast stream; the name of the broadcast station group, if any, that owns the station(s); the Designated Market Areas in which affected subscribers reside; and the date and time of the initial interruption to programming.<sup>48</sup> Additionally, Reporting Entities would report the number of subscribers affected.<sup>49</sup> Critically, subscriber information is one of the key metrics by which a blackout's impact can be measured. We recognize that market-by-market subscriber data can be particularly sensitive and is information not routinely made public by MVPDs. Therefore we propose giving Reporting Entities the option to submit the subscriber data provided confidentially.<sup>50</sup> Reporting Entities would be able to opt for confidential treatment of the subscriber data provided by designating the data as confidential within the portal, rather than filing a separate request with the Commission.<sup>51</sup> We encourage Reporting Entities to submit an Initial Blackout Notification as soon as practicable, but do not believe that this proposed reporting obligation would

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<sup>46</sup> *Infra* Appendix A, § 76.68(a); *infra* para. 27.

<sup>47</sup> *Infra* Appendix A, § 76.68(a)(1).

<sup>48</sup> *Id.* § 76.68(a)-(b).

<sup>49</sup> *Id.* § 76.68(a)(1)(vi).

<sup>50</sup> *Id.* § 76.68(b).

<sup>51</sup> 47 CFR 0.459(a)(4) (“The Commission may use abbreviated means for indicating that the submitter of a record seeks confidential treatment, such as a checkbox enabling the submitter to indicate that the record is confidential. However, upon receipt of a request for inspection of such records pursuant to § 0.461, the submitter will be notified of such request pursuant to § 0.461(d)(3) and will be requested to justify the confidential treatment of the record, as set forth in paragraph (b) of this section”). Reporting Entities seeking confidential treatment of any other data requested pursuant to paragraphs (a)(1)(i) through (v) of the proposed rule must submit a request that the data be treated as confidential with the submission of the Initial Blackout Notification, along with their reasons for withholding the information from the public, pursuant to 47 CFR 0.459. *Infra* Appendix A, § 76.68(b).

require more than 24 hours to complete after a blackout becomes reportable. We tentatively conclude that the 48-hour reporting window reasonably balances the benefit of receiving prompt notice of a blackout with the burden of reporting by giving Reporting Entities a sufficient amount of time to gather and submit the proposed information.

25. We invite comment on this proposed information collection, the 48-hour reporting window, the public treatment of the non-subscriber data, and the confidential treatment of the subscriber data. Would it be beneficial to require entities to provide any additional information as part of the Initial Blackout Notification? Would it be beneficial to also have Reporting Entities identify the specific areas (for example, counties or cable communities) affected within the DMAs identified? If so, should entities report such information publicly or confidentially? Would any of the proposed disclosures be difficult for a Reporting Entity to provide within the proposed reporting window, and if so, why? Do commenters believe that the proposed 48-hour reporting window is sufficient, or do they believe a reporting window of longer or shorter duration would be more appropriate? If proposing another reporting window, commenters should explain why they think that time period is more appropriate. Is there any non-subscriber information disclosed in the Initial Blackout Notification for which Reporting Entities should be able to opt for confidential treatment by designating the data as confidential within the portal, rather than filing a separate request with the Commission? If so, why? Conversely, is there any reason why the subscriber information provided should not be given such confidential treatment?

26. *Final Blackout Notification.* No later than two business days after the resumption of carriage to subscribers, we propose that Reporting Entities submit a Final Blackout Notification, which would update the initial blackout notice provided.<sup>52</sup> The information in this Final Blackout Notification would be available to the public and would report the date on which retransmission resumed for each station included in the Initial Blackout Notification.<sup>53</sup> As an update to the Initial Blackout Notification, we envision that Reporting Entities will be able to easily update the information in the reporting portal for each station as it resumes retransmission. We request comment on this proposed Notification, including the information disclosures required, the proposed two-business-day reporting window, and the public

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<sup>52</sup> *Infra* Appendix A, § 76.68(a)(2).

<sup>53</sup> *Id.*



treatment of the disclosures. In the event of a partial end to a reported blackout involving multiple stations (that is, the parties have resolved the retransmission consent dispute with respect to some of the blacked out stations, but not others), should reporting entities be required, as proposed, to timely report the resumption of carriage for each resumed station until all stations included in the Initial Blackout Notification have been accounted for? Or should Reporting Entities only be required to submit a report once the dispute has been resolved for all stations included in the initial notification (with different carriage resumption dates for different stations listed as appropriate)? Is there any other information we should request as part of this final notice? Would any of the proposed disclosures be difficult for a Reporting Entity to provide within the proposed reporting window? Are there any reasons why the final Notification should not be publicly available, and if so, why? Is there a point at which the Commission should consider a blackout to be permanent, or should we consider blackouts to be ongoing until a final notification is filed regardless of their duration?

27. *Submissions.* We propose providing an online reporting portal through which entities would be able to submit blackout notices to the Commission. We envision these notices would be made through a standardized form in the portal, fillable by the Reporting Entity, with fields for the various data categories. As noted above, the Bureau would announce specific instructions via public notice. We tentatively conclude that this approach to collecting data ensures that the Commission learns of reportable broadcast station blackouts in a timely manner and, at the same time, minimizes the amount of time and effort required to comply with the reporting requirements. We seek comment on how best to share the information collected from the Initial and Final Blackout Notifications with the public. For example, in addition to publicly posting the non-confidential portions of the blackout notices, should the web portal include a public-facing, searchable database of the information collected from the blackout notices? Or would it suffice for the Commission to publicly post the blackout notices by date of submission?

28. *Costs and Benefits.* We tentatively conclude this process is reasonable in light of the significant benefits to the Commission, Congress, and the public from having timely access to important and accurate information on service disruptions. As detailed above, we anticipate that the availability of this blackout information will have tangible benefits for the Commission and the public.<sup>54</sup> Moreover, we

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<sup>54</sup> *Supra* paras. 12, 18.

tentatively conclude that Reporting Entities already collect this information in the ordinary course of business for their internal use. Thus, we expect the only burden associated with the proposed reporting requirements would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations.<sup>55</sup> As a result, we expect that complying with our proposed reporting requirements would create a minimal administrative burden, and that, on balance, the benefits to the public resulting from compiling and analyzing this blackout information would outweigh any potential burden. We seek comment on the reasonableness of the proposed reporting process, and we request comment on relevant types of blackout information already being collected by cable operators, DBS providers, other MVPDs, and broadcast stations so that we can best align our metrics with what is already available to them. We invite comment on the burdens that might be imposed by the adoption of the proposed reporting requirements, and in particular welcome comments quantifying that burden and recommendations to mitigate it. Would collecting and reporting as proposed be more burdensome for small entities?<sup>56</sup> If so, why and to what degree? In addition, we seek comment on the benefits and drawbacks of treating the non-subscriber information disclosures in the Initial and Final Blackout Notification as public information. Is there any alternative reporting approach that would maximize the potential benefits and accomplish the proceeding's objectives in a less costly, less burdensome, and/or more effective manner? Should there be an additional or alternative reporting threshold for small entities? If so, what should that reporting threshold be and why is it necessary? Alternatively, is the burden of reporting outweighed by the benefits gained from the ability to better monitor and study reported blackouts?

29. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,<sup>57</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely

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<sup>55</sup> *Supra* para. 27.

<sup>56</sup> *Infra* Appendix B, paras. 5-25.

<sup>57</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. 151.

affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>58</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

### **C. Legal Authority**

30. We tentatively conclude the Commission has ample authority to adopt the proposed blackout reporting requirements. Section 325(b)(3)(A) of the Act grants the Commission broad authority to “establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent.”<sup>59</sup> The Commission has previously concluded that “this provision grants the Commission authority to adopt rules governing retransmission consent negotiations[.]”<sup>60</sup> Separately and in addition, section 325(b)(3)(C) mandates that broadcasters and MVPDs negotiate retransmission consent in good faith.<sup>61</sup> The Commission has express statutory authority to adopt rules implementing this requirement.<sup>62</sup> In past actions it has recognized that “by imposing a good faith obligation, Congress intended that the Commission develop and enforce a process” conducive to good faith negotiations<sup>63</sup> rather than “dictate the outcome” of such negotiations.<sup>64</sup> We tentatively conclude the proposed blackout reporting requirements fall squarely within the Commission’s oversight authority under both section 325(b)(3)(A) and section 325(b)(3)(C). Specifically, we tentatively find that timely notification about a blackout and access to accurate information about the surrounding circumstances is critical to carrying out

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<sup>58</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

<sup>59</sup> 47 U.S.C. 325(b)(3)(A).

<sup>60</sup> *Amendment of the Commission’s Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3371, para. 30 (2014).

<sup>61</sup> 47 U.S.C. 325(b)(3)(C).

<sup>62</sup> *Id.*

<sup>63</sup> *Good Faith Order*, 15 FCC Rcd at 5455, para. 24.

<sup>64</sup> *2011 Retrans Consent NPRM*, 26 FCC Rcd at 2721, para. 7 (quoting S. Rep. No. 92, 102<sup>nd</sup> Cong., 1<sup>st</sup> Sess. 1991, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1169); *Good Faith Order*, 15 FCC Rcd at 5454-55, para. 23.

our statutory mission. Reporting blackout information is the most efficient means for the Commission to obtain critical information needed to monitor ongoing blackout situations that could result in the filing of a retransmission consent complaint. Indeed, we expect that access to timely reporting information could result in tangible improvements to the retransmission consent negotiation process by allowing Commission intervention to get negotiations back on track if necessary, consistent with statutory requirements. In that way, protracted blackouts may be avoided. Thus, we tentatively find that requiring notification to the Commission when broadcast programming has gone dark on subscribers' MVPD service because of failed retransmission consent negotiations will allow the Commission to better govern the retransmission consent negotiation process as envisioned under the Communications Act.

31. The Commission also has broad information collection authority under section 403 of the Act, which grants the Commission discretion to require disclosures on matters, like retransmission consent, that fall within the Commission's jurisdiction.<sup>65</sup> We tentatively find that a retransmission consent-related blackout that lasts more than 24 hours warrants further inquiry by the Commission about the circumstances surrounding that blackout, to ensure that all parties are fulfilling their statutory obligation to negotiate in good faith. In addition, the Act grants the Commission broad authority to take the steps necessary to implement its mandates, and thus provides concurrent authority for the proposed blackout reporting rules. Sections 4(i) and 303 generally authorize the Commission to take any actions "as may be necessary" to ensure that the Commission can properly govern the retransmission consent negotiation process and thereby ensure that broadcasters and MVPDs fulfill their statutory obligation to

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<sup>65</sup> 47 U.S.C. 403 ("The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter."); *Stahlman v. FCC*, 126 F.2d 124, 127 (D.C. Cir. 1942) ("[F]ull authority and power is given to the Commission with or without complaint to institute an inquiry concerning questions arising under the provisions of the Act or relating to its enforcement. This . . . includes authority to obtain the information necessary to discharge its proper functions, which would embrace an investigation aimed at the prevention or disclosure of practices contrary to public interest.") (citing 47 U.S.C. 403); *Barrier Communications Corp.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186, 10189, para. 8 (2020) ("Section 403 of the Communications Act . . . grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations."); *In re: James A. Kay, Jr.*, WT Docket No. 94-147, Memorandum Opinion and Order, 13 FCC Rcd 16369, 16372, para. 10 (1998) ("[U]nder 47 U.S.C. 403, the Commission enjoys wide discretion to initiate investigations with or without a complaint and has a responsibility to investigate where there is reason to believe that a licensee is violating the Commission's rules or policies."). See also 47 CFR 1.1 ("The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time . . . for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.").

negotiate retransmission consent in good faith.<sup>66</sup>

32. We also tentatively conclude that there is statutory support for the proposed reporting requirement in sections 632(b) and 335(a) of the Act.<sup>67</sup> Under section 632(b), the Commission can adopt customer service requirements for cable operators.<sup>68</sup> And, pursuant to section 335(a), the Commission has authority to impose on DBS providers public interest requirements for “providing video programming,” which we tentatively conclude includes reports on video programming blackouts.<sup>69</sup> In addition, we tentatively conclude that informing the Commission and the public about the availability of broadcast signals both serves the public interest and helps consumers make informed choices concerning video programming services. Blackout reporting will give the public greater visibility into the breadth and impact of blackouts arising from negotiation disputes and provide a reliable source of information about the entities most frequently involved in blackouts. We tentatively conclude that the proposed reporting requirements are customer service and public interest requirements that squarely fall within our authority under sections 632(b) and 335(a). As the Commission recently explained, “Consumer access to clear, easy-to-understand, and accurate information is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services. The same information empowers consumers to choose services that best meet their needs and matches their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their expectations.”<sup>70</sup> These are some of the same goals that the proposed reporting requirements intend to accomplish. We seek comment on our authority to adopt blackout reporting requirements for cable

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<sup>66</sup> See 47 U.S.C. 154(i) (authorizing the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions”); 47 U.S.C. 303(r) (the Commission shall “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act”); 47 U.S.C. 325(b)(3)(A) (the Commission shall “establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection . . .”).

<sup>67</sup> 47 U.S.C. 552(b), 335(a).

<sup>68</sup> *Id.* Section 552(b) (“The Commission shall . . . establish standards by which cable operators may fulfill their customer service requirements.”).

<sup>69</sup> *Id.* Section 335(a) (“The Commission shall . . . initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming.”). Although section 335(a) requires that the Commission adopt certain statutory political broadcasting requirements for DBS providers, the statute is clear that this list is not exhaustive. 47 U.S.C. 335(a) (“Any regulations prescribed pursuant to such rulemaking shall, *at a minimum*, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service . . .”) (emphasis added).

<sup>70</sup> *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, 2022 WL 17100958, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86, at \*1, para. 1 (Nov. 17, 2022).

operators and DBS providers under these provisions.

33. To the extent we adopt blackout reporting requirements for broadcasters, we tentatively conclude that our authority under Title III allows us to adopt such requirements to serve the public interest objectives stated above. Title III endows the Commission with “expansive powers” and a “comprehensive mandate to ‘encourage the larger and more effective use of radio in the public interest.’”<sup>71</sup> This mandate is reinforced by section 307(b), which directs the Commission to “provide a fair, efficient, and equitable distribution” of service throughout the country.<sup>72</sup> Section 303 of the Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Act if such obligations are necessary for the “public convenience, interest, or necessity” and are not inconsistent with other provisions of law.<sup>73</sup> In addition, sections 307 and 316 of the Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity.<sup>74</sup> Here, we tentatively conclude that the proposed reporting requirements would serve the public interest by informing the public about the availability of local broadcast signals on MVPD platforms and by providing the Commission and the public a systematic way to track broadcast station blackouts occurring on MVPD platforms. While some MVPD subscribers could replace the blacked out local broadcast signals with the broadcaster’s own over-the-air transmission, not all subscribers would be able to do so because they either lack the necessary equipment or live in locations where they are unable to sufficiently receive the over-the-air transmission.<sup>75</sup> Therefore, over-the-air transmission of local broadcast signals may not be a reasonable substitute for the retransmission of local broadcast programming on MVPD platforms. We tentatively conclude that the proposed blackout reporting requirements would “encourage the larger and

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<sup>71</sup> *Cellco Partnership v. FCC*, 700 F.3d 534, 541-42 (D.C. Cir. 2012) (quoting *NBC v. United States*, 319 U.S. 190, 219 (1943) and 47 U.S.C. 303(g) (“The Commission from time to time, as public convenience, interest, or necessity requires, shall . . . (g) study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest[.]”)).

<sup>72</sup> 47 U.S.C. 307(b); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 173-74 (1968) (“Congress has imposed upon the Commission the ‘obligation of providing a widely dispersed radio and television service, with a fair, efficient, and equitable distribution’ of service among the ‘several States and communities.’”) (quoting S. Rep. No. 923, 86<sup>th</sup> Cong., 1<sup>st</sup> Sess. and 47 U.S.C. 307(b)).

<sup>73</sup> 47 U.S.C. 303.

<sup>74</sup> *Id.* Sections 307, 316; *Cellco Partnership*, 700 F.3d at 543.

<sup>75</sup> *Supra* note 4.

more effective use of radio in the public interest” and promote the fair, efficient, and equitable distribution” of service throughout the country by informing the Commission and the public about the disruption of local broadcast signal carriage on MVPD platforms. Therefore, we tentatively conclude that it serves the public interest for the Commission and the public to have a centralized database to be able to systematically monitor obstacles to signal and programming availability. We seek comment on these and other potentially relevant sources of authority.

#### **IV. INITIAL REGULATORY FLEXIBILITY ANALYSIS**

34. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>76</sup> the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>77</sup> In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>78</sup>

##### **A. Need for, and Objectives of, the Proposed Rules**

35. In the *NPRM*, the Commission considers and seeks comment on a proposal to impose reporting requirements for broadcast television station blackouts that occur as result of a retransmission consent dispute. Over the past decade, S&P Capital IQ data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically, causing service disruptions for consumers. The Commission usually learns of broadcast station blackouts through reports of disputes in the media or informal communication with staff, which does not allow the Commission or the public access to timely information on these service disruptions. Under this proposal, cable operators, satellite TV providers, and other multichannel video programming distributors (MVPDs) would be required to notify the Commission when a broadcast station blackout lasting over 24 hours

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<sup>76</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

<sup>77</sup> 5 U.S.C. 603(a).

<sup>78</sup> *Id.*

occurs on their system. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of confidential information about its scope. We tentatively conclude that this proposed rule would ensure that the Commission receives prompt and accurate information about critical broadcast service disruptions when they occur. The availability of this information would also help the Commission determine the extent of blackouts nationwide, identify recurring problems, determine whether actions can be taken to help prevent future blackouts from occurring, and identify any statistically meaningful trends across blackouts.

## **B. Legal Basis**

36. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 552.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

37. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>79</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>80</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>81</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>82</sup>

38. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and

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<sup>79</sup> 5 U.S.C. 603(b)(3).

<sup>80</sup> *Id.* Section 601(6).

<sup>81</sup> *Id.* Section 601(3) (adopting by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

<sup>82</sup> 15 U.S.C. 632(a)(1).



infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.<sup>83</sup> Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.<sup>84</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>85</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>86</sup>

39. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>87</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>88</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>89</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.<sup>90</sup> Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.<sup>91</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

40. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its

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<sup>83</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

<sup>87</sup> See 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>88</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie> w=false.

<sup>89</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>90</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>91</sup> *Id.*

own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>92</sup> Based on industry data, there are about 420 cable companies in the U.S.<sup>93</sup> Of these, only seven have more than 400,000 subscribers.<sup>94</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>95</sup> Based on industry data, there are about 4,139 cable systems (headends) in the U.S.<sup>96</sup> Of these, about 639 have more than 15,000 subscribers.<sup>97</sup> Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

41. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>98</sup> For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.<sup>99</sup> Based on industry data, only six cable system operators have more than 677,000 subscribers.<sup>100</sup>

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<sup>92</sup> 47 CFR 76.901(d).

<sup>93</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>94</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

<sup>95</sup> 47 CFR 76.901(c).

<sup>96</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>97</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>98</sup> 47 U.S.C. 543(m)(2).

<sup>99</sup> *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (2001 Subscriber Count PN). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (2020 Communications Marketplace Report). However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count PN, the Commission still relies on the subscriber count threshold established by the 2001 Subscriber Count PN for purposes of this rule. *See* 47 CFR 76.901(e)(1).

<sup>100</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>101</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

42. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.<sup>102</sup> Transmission facilities may be based on a single technology or combination of technologies.<sup>103</sup> Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband Internet services.<sup>104</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>105</sup>

43. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>106</sup> U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.<sup>107</sup> Of this number, 2,964 firms operated with fewer than

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<sup>101</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. *See* 47 CFR 76.910(b).

<sup>102</sup> U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

<sup>105</sup> *Id.*

<sup>106</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>107</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms*

250 employees.<sup>108</sup> Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service, DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.<sup>109</sup> DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

44. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.<sup>110</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>111</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>112</sup> Of this total, 2,964 firms operated with fewer than 250 employees.<sup>113</sup> Thus under the SBA size standard, the majority of firms in this industry can be considered small.

45. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite

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for the U.S.: 2017, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>108</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>109</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

<sup>110</sup> U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>111</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>112</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>113</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.<sup>114</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>115</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.<sup>116</sup> Of this total, 2,964 firms operated with fewer than 250 employees.<sup>117</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

46. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers<sup>118</sup> is the closest industry with an SBA small business size standard.<sup>119</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>120</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>121</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>122</sup> Additionally, based on Commission data in the 2022 Universal

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<sup>114</sup> U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>115</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>116</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

<sup>117</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>118</sup> U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>119</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>120</sup> *Id.*

<sup>121</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

<sup>122</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.<sup>123</sup> Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.<sup>124</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

47. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.<sup>125</sup> Wired Telecommunications Carriers<sup>126</sup> is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>127</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>128</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>129</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.<sup>130</sup> Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.<sup>131</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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<sup>123</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>124</sup> *Id.*

<sup>125</sup> Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>126</sup> U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>127</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>128</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>129</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>130</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>131</sup> *Id.*

48. *Competitive Access Providers (CAPs)*. Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to CAPs. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.<sup>132</sup> Under the SBA small business size standard a Wired Telecommunications Carrier is a small entity if it employs 1,500 employees or less.<sup>133</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>134</sup> Of that number, 2,964 firms operated with fewer than 250 employees.<sup>135</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 659 CAPs and competitive local exchange carriers (CLECs), and 69 cable/coax CLECs that reported they were engaged in the provision of competitive local exchange services.<sup>136</sup> Of these providers, the Commission estimates that 633 providers have 1,500 or fewer employees.<sup>137</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

49. *Open Video Systems*. The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is "Wired Telecommunications Carriers."<sup>138</sup> The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.<sup>139</sup> U.S. Census Bureau data for 2017 show that there were

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<sup>132</sup> U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>133</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>134</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>135</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>136</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>137</sup> *Id.*

<sup>138</sup> U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>139</sup> 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

3,054 firms in this industry that operated for the entire year.<sup>140</sup> Of this total, 2,964 firms operated with fewer than 250 employees.<sup>141</sup> Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

50. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,”<sup>142</sup> transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).<sup>143</sup> Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.<sup>144</sup>

51. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications

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<sup>140</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI RM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI RM&hidePrevious=false>.

<sup>141</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>142</sup> The use of the term “wireless cable” does not imply that it constitutes cable television for statutory or regulatory purposes.

<sup>143</sup> 47 CFR 27.4; see also *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>144</sup> Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.



Carriers (*except* Satellite).<sup>145</sup> The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>146</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>147</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>148</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

52. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.<sup>149</sup> The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>150</sup> Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won four licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.<sup>151</sup> One of the winning bidders claiming a small business status classification in the BRS license auction has

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<sup>145</sup> U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>146</sup> 13 CFR 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>147</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>148</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>149</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>150</sup> 47 CFR 27.1218(a).

<sup>151</sup> Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

an active license as of December 2021.<sup>152</sup>

53. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years.<sup>153</sup> In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

54. *Fixed Microwave Services.* Fixed microwave services include common carrier,<sup>154</sup> private-operational fixed,<sup>155</sup> and broadcast auxiliary radio services.<sup>156</sup> They also include the Upper Microwave Flexible Use Service (UMFUS),<sup>157</sup> Millimeter Wave Service (70/80/90 GHz),<sup>158</sup> Local Multipoint Distribution Service (LMDS),<sup>159</sup> the Digital Electronic Message Service (DEMS),<sup>160</sup> 24 GHz

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<sup>152</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>153</sup> 47 CFR 27.1219(a).

<sup>154</sup> 47 CFR Part 101, Subparts C and I.

<sup>155</sup> *Id.* Subparts C and H.

<sup>156</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>157</sup> 47 CFR Part 30.

<sup>158</sup> 47 CFR Part 101, Subpart Q.

<sup>159</sup> *Id.* Subpart L.

<sup>160</sup> *Id.* Subpart G.

Service,<sup>161</sup> Multiple Address Systems (MAS),<sup>162</sup> and Multichannel Video Distribution and Data Service (MVDDS),<sup>163</sup> where in some bands licensees can choose between common carrier and non-common carrier status.<sup>164</sup> Wireless Telecommunications Carriers (*except Satellite*)<sup>165</sup> is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>166</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>167</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>168</sup> Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

55. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.<sup>169</sup>

56. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.* Subpart O.

<sup>163</sup> *Id.* Subpart P.

<sup>164</sup> 47 CFR 101.533, 101.1017.

<sup>165</sup> U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>166</sup> 13 CFR 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>167</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>168</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>169</sup> 47 CFR 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

57. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”<sup>170</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>171</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.<sup>172</sup> 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.<sup>173</sup> Of that number, 657 firms had revenue of less than \$25,000,000.<sup>174</sup> Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

58. As of June 30, 2023, there were 1,375 licensed commercial television stations.<sup>175</sup> Of this total, 1,256 stations (or 91.3%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 17, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission

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<sup>170</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

<sup>171</sup> *Id.*

<sup>172</sup> 13 CFR 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

<sup>173</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>174</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>175</sup> *Broadcast Station Totals as of June 30, 2023*, Public Notice, DA 23-582 (rel. July 14, 2023) (*July 2023 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-23-582A1.pdf>.

estimates as of June 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,902 LPTV stations and 3,123 TV translator stations.<sup>176</sup> The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

59. The proposed rule would require all MVPDs carrying broadcast programming pursuant to retransmission consent agreements, including cable operators and DBS providers (Reporting MVPDs or, more broadly, Reporting Entities),<sup>177</sup> to notify the Commission of both the start and conclusion of a broadcast station blackout lasting over 24 hours. The initial notification would provide basic blackout information, both public and confidential, to the Commission within 48 hours of the start of a reportable broadcast station blackout (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable broadcast station blackout, would publicly identify the date retransmission resumed (Final Blackout Notification). We propose that this information be collected through an online reporting portal designed, hosted, and administered by the Commission. Reporting Entities would be given notice of the specific reporting procedures by public notice before being required to submit blackout information via the reporting portal. Public blackout information collected through the portal would then be available on the Commission's website.<sup>178</sup>

60. To streamline reporting, the *NPRM* proposes creating an online reporting portal, modeled after the Commission's Network Outage Reporting System (NORS), which Reporting Entities would use to report broadcast station blackouts occurring on MVPD platforms.<sup>179</sup> The proposed data to be reported

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<sup>176</sup> *Id.*

<sup>177</sup> 47 CFR 76.64(d) ("A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming."); *infra* Appendix A—Proposed Rules, § 76.68(c)(1).

<sup>178</sup> *Supra NPRM*, Appendix A—Proposed Rules.

<sup>179</sup> Federal Communications Commission, *Network Outage Reporting System (NORS)*,

would be filed with the Commission via this web-based system. As with the Commission's Network Outage Reporting System (NORS), this system would use an electronic template to promote the ease of reporting and encryption technology to ensure the security of the information fields. The proposed blackout information to be reported would be available to the public, except for more sensitive information regarding subscribers, which Reporting Entities may designate as confidential.

61. The *NPRM* aims to tailor the proposed requirements so that they impose a minimal burden on small and other Reporting Entities while still ensuring that the Commission and the public have access to critical data on service disruptions. It is likely that small and other Reporting Entities already collect this information in the ordinary course of business for their internal use. As such, the operational cost of implementation associated with the proposed reporting requirements for small entities would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

62. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>180</sup>

63. The *NPRM* considers certain alternatives that may impact small entities. One such alternative discussed is whether mandatory blackout reporting is necessary and if voluntary reporting could support the Commission's efforts to stay informed on the frequency and impact of broadcast station blackouts. The *NPRM* concludes that based on experience with voluntary reporting in other contexts, this

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<https://www.fcc.gov/network-outage-reporting-system-nors> (last updated Mar. 25, 2022).

<sup>180</sup> 5 U.S.C. 603(c)(1)-(4).

would likely create substantial gaps in data that would significantly impair the Commission's efforts and therefore not sufficiently serve the information collection purposes of this reporting initiative. The *NPRM* also considers the timeliness of the Final Blackout Notification reporting the resumption of carriage when multiple stations are involved in a blackout and whether Reporting Entities must report the partial end of a blackout as carriage for each station resumes, or report only after the dispute has been resolved for all the stations included in the Initial Blackout Notification.

64. We anticipate that complying with the proposed reporting requirements will create a minimal administrative burden on small entities and that, on balance, the benefits of compiling this information on service disruptions would outweigh any potential burden. We expect that Reporting Entities will have ready access to the basic blackout information that is proposed to be included in the required notices—when and where the blackout occurred and what subscribers were affected. As a result, we believe that, in the normal course of operations, the only potential burden associated with the reporting requirements contained in this *NPRM* will be the time required to complete the Initial and Final Notifications. We also anticipate that electronic submission should minimize the amount of time and effort that will be required to comply with the rule proposed in this *NPRM*. In addition, we do not anticipate that it will be costly or time consuming for Reporting Entities to fill out and submit the proposed notifications, each of which is quite brief. Given this reporting framework, we expect that the economic impact on small entities is not likely to be significant, and therefore believe that the proposed process is reasonable in light of the benefits to the Commission, Congress, and the public from having timely access to important and accurate information on service disruptions.

65. The *NPRM* seeks comment on the types of burdens small entities will face in complying with the proposed requirements and invites commenters to quantify that burden and recommend how to mitigate it.<sup>181</sup> To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM*, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the reporting requirements described above can be minimized for small entities. Entities, especially small businesses and small entities, are encouraged to quantify the

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<sup>181</sup> *NPRM* at para. 28.

costs and benefits of the proposed reporting requirements. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

66. None.

**V. PROCEDURAL MATTERS**

67. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>182</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>183</sup> Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM*. The IRFA is attached as Appendix B. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.

68. *Initial Paperwork Reduction Act Analysis*. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.<sup>184</sup> In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.<sup>185</sup>

69. *Providing Accountability Through Transparency Act*. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a

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<sup>182</sup> See 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

<sup>183</sup> *Id.* Section 605(b).

<sup>184</sup> The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 of the U.S. Code).

<sup>185</sup> The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 of the U.S. Code). See 44 U.S.C. 3506(c)(4).



brief plain-language summary of the proposed rule.<sup>186</sup> Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on: <https://www.fcc.gov/proposed-rulemakings>.

70. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>187</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

#### IV. ORDERING CLAUSES

71. IT IS ORDERED, pursuant to the authority found in sections 1, 4(i), 4(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309,

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<sup>186</sup> 5 U.S.C. 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

<sup>187</sup> 47 CFR 1.1200 *et seq.*

316, 325, 335(a), 403, and 552, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

72. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 76**

Television.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

## Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

### **PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Add § 76.68 to Subpart D to read as follows:

#### **§ 76.68 Reporting Requirements for Commercial Television Broadcast Station Blackouts.**

(a) *Information Required.* All information must be submitted to the Commission electronically in accordance with procedures specified by the Media Bureau by public notice.

(1) In the event of a Broadcast Station Blackout lasting over 24 hours, the Reporting Entity shall, within 48 hours of the initial interruption to programming, submit an Initial Blackout

Notification. This Notification will be available to the public and shall identify:

- (i) The name of the Reporting Entity;
- (ii) The commercial television broadcast station or stations no longer being retransmitted, including network affiliation(s), if any, of each affected primary and multicast stream;
- (iii) The name of the broadcast station group, if any, that owns the commercial television broadcast station(s)
- (iv) The Designated Market Area(s) in which affected subscribers reside;
- (v) The date and time of the initial interruption to programming; and
- (vi) The number of subscribers affected.

(2) No later than 2 business days after the resumption of carriage to subscribers, the Reporting Entity shall submit a Final Blackout Notification. This Notification will be available to the public and shall state, with respect to each station identified in the Initial Blackout Notification, that retransmission has resumed and include the date on which retransmission resumed.

(b) *Confidential Treatment.* Reporting Entities may request that subscriber data submitted pursuant to

paragraph (a)(1)(vi) of this section be treated as confidential and be withheld from public inspection by so indicating on the notice at the time that they submit such data. Reporting Entities seeking confidential treatment of any other data requested pursuant to paragraphs (a)(1)(i) through (v) of this section must submit a request that the data be treated as confidential with the submission of the Initial Blackout Notification, along with their reasons for withholding the information from the public, pursuant to § 0.459 of this chapter.

*(c) Definitions.*

(1) *Reporting Entity.* The entity reporting a Broadcast Station Blackout.

(2) *Broadcast Station Blackout.* Any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission.

(3) *Commercial Television Broadcast Station.* For the purposes of this section, a "commercial television broadcast station" includes all commercial full power, class A, and low power television broadcast stations.

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